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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 417 (AKH)

5 ALI KOURANI,
6 a/k/a "Ali Mohamad Kourani,"
7 a/k/a "Jacob Lewis,"
8 a/k/a "Daniel,"

Defendant.

Conference

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9
10 New York, N.Y.
11 December 8, 2017
12 1:00 p.m.

13 Before:

14 HON. ALVIN K. HELLERSTEIN,

District Judge

15 APPEARANCES

16 JOON H. KIM
17 Acting United States Attorney for
18 the Southern District of New York
19 BY: EMIL J. BOVE III
20 AMANDA L. HOULE
21 Assistant United States Attorneys

22 ALEXEI SCHACHT
23 Attorney for Defendant
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(Case called)

MS. HOULE: Good afternoon, your Honor. Amanda Houle and Emil Bove, for the government. With us at counsel's table is Joseph Costello, a special agent from the FBI.

THE COURT: Good afternoon.

MR. SCHACHT: Good afternoon, Judge, Alexei Schacht for Kourani.

THE COURT: Good afternoon, Mr. Schacht.

Good afternoon, Mr. Kourani.

First of all, does Mr. Kourani need an interpreter, Mr. Schacht?

MR. SCHACHT: No, your Honor, he does not. He speaks English very well.

THE COURT: Ms. Houle.

MS. HOULE: Thank you, your Honor.

What we would like to do today is to, first, provide an update to your Honor on the status of the case, including discovery and some plea discussions; to then proceed to a Section 2 hearing, which I understand your Honor is prepared to hear in the robing room, where we can describe classified discovery and CIPA practice; and to then come back out, in open court, on the record, and set a schedule for Rule 12 pretrial motions as well as CIPA motions.

THE COURT: OK.

MS. HOULE: First, your Honor, since our last

Hc8WkouC

1 conference --

2 THE COURT: One minute.

3 Sorry.

4 MS. HOULE: Thank you, your Honor.

5 Since our last conference, the parties have engaged in
6 plea discussions. Those have now terminated. While a
7 potential offer was discussed, there was no formal offer made.
8 And we understand, based on our discussions with defense
9 counsel, that the case will now proceed to motions and to
10 trial.

11 THE COURT: So I should set a date.

12 MS. HOULE: What we'd like to do, your Honor, at the
13 end of the conference today is to set a date for motions.

14 As to discovery, as your Honor knows, a protective
15 order for certain nonclassified discovery was entered on August
16 3, 2017. Pursuant to that order and during the course of plea
17 discussions, the government made an initial discovery
18 production that included records of the defendant's statements
19 to law enforcement, the contents of his phone that was seized
20 at the time of his arrest as well as all of the search warrants
21 and affidavits in this case.

22 Shortly after the termination of plea discussions,
23 defense counsel provided the government with a hard drive.
24 That was on or about November 30, and the government has
25 returned the hard drive with the bulk of discovery in this

Hc8WkouC

1 case. That included contents of several electronic devices,
2 including phones and computers seized from the defendant's
3 residence; call recordings from three telephone lines; the
4 contents of ten Facebook accounts; three email accounts; an
5 Instagram account; and other social media accounts; the
6 defendant's immigration file and passport application records;
7 records relating to the defendant's travel; financial records;
8 and records relating to the defendant's purchase and shipment
9 of certain -- from some commercial vendors.

10 THE COURT: What's the volume?

11 MS. HOULE: Your Honor, one moment, please?

12 Your Honor, in terms of the size of the hard drive,
13 the contents of the information, the initial drive is three
14 gigabytes of data. The bulk of the data is the returns from
15 the Facebook accounts and the email accounts as well as the
16 call recordings.

17 THE COURT: Can you estimate the number of pages of
18 documents that each of it equals?

19 MS. HOULE: It's in the hundreds of thousands, your
20 Honor.

21 THE COURT: One minute.

22 So it's a substantial volume for Mr. Schacht to
23 digest.

24 MS. HOULE: It is a substantial volume of discovery,
25 your Honor, although I understand from my discussions with

Hc8WkouC

1 Mr. Schacht that he wishes to proceed quickly to Rule 12
2 motions in this case.

3 THE COURT: Is there more production that would be
4 given?

5 MS. HOULE: There's one more production to make, your
6 Honor, and we will make it by the end of next week. That will
7 include the contents of two email addresses and a Facebook
8 account and certain text messages.

9 THE COURT: When would it be appropriate for me to
10 require you to file motions along with a briefing schedule by
11 which the government will respond?

12 MS. HOULE: Your Honor, if I may?

13 THE COURT: Why don't I ask Mr. Schacht that question.

14 MR. SCHACHT: Your Honor, with regard to initial Rule
15 12-type motions, the main motion that I seek permission to file
16 is a suppression motion, and I think I could have my motions
17 filed rapidly, meaning within a few weeks. Maybe right after
18 the new year, a full set of motions could be filed by me.

19 THE COURT: When?

20 MS. HOULE: The schedule that the parties had
21 discussed, your Honor, was for defense motions to be filed on
22 January 8 with opposition by January 29 and any reply by
23 February 12.

24 MR. SCHACHT: To be clear, though, this doesn't apply
25 to the classified information.

Hc8WkouC

1 THE COURT: Why do we separate?

2 MS. HOULE: Your Honor, perhaps now would be a good
3 time for us to proceed to the Section 2 hearing.

4 THE COURT: OK.

5 MS. HOULE: We can explain the scope of the classified
6 discovery and what we anticipate for motions.

7 THE COURT: All right. Are we going to have one date
8 for both, or do I need to separate them? Can you tell me that?

9 MS. HOULE: We're hoping to do two separate dates.

10 MR. SCHACHT: I agree with that request, your Honor.

11 THE COURT: All right. Will there be again an open
12 proceeding after we finish inside?

13 MS. HOULE: Yes, please, your Honor.

14 (Pages 7-13 SEALED)

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Hc8WkouC

1 THE COURT: Be seated.

2 In closed session, the government disclosed the nature
3 of the production that is to be made. Pursuant to FISA, there
4 are motions that are to be made by both sides, or can be made
5 by both sides, and they will be made 90 days following my
6 decision on the motions made by Mr. Schacht with oppositions
7 filed 21 days thereafter and replies 10 days thereafter.

8 Anything further, Ms. Houle?

9 MS. HOULE: One moment, your Honor?

10 Your Honor, we have proposed to set a conference date
11 for some date after the Rule 12 motions have been fully
12 briefed, and then we'll move to exclude time through that date.

13 THE COURT: Why don't I give you a date now.

14 MS. HOULE: Thank you, your Honor.

15 THE COURT: I propose February 28, 2018, 4:00.

16 MS. HOULE: Thank you, your Honor.

17 The government moves to exclude time through February
18 28 to permit --

19 THE COURT: Is that date OK, Mr. Schacht?

20 MR. SCHACHT: Yes. Yes. I'm sorry, your Honor.
21 That's fine with me.

22 THE COURT: Go ahead.

23 MS. HOULE: The government moves to exclude time
24 through February 28 to permit the defense to review the
25 discovery, to contemplate and file those pretrial motions.

Hc8WkouC

1 THE COURT: OK.

2 Mr. Schacht.

3 MR. SCHACHT: Yes, your Honor. Thank you. I consent.

4 THE COURT: Please don't ask me to adjourn any of
5 these dates: January 8, January 29 and February 12.

6 MS. HOULE: Understood. Thank you, your Honor.

7 MR. SCHACHT: I won't ask for an adjournment. Thank
8 you.

9 THE COURT: OK. And then we'll hear the motions on
10 February 28. I endeavor to decide motions the same day they're
11 heard, so I will hope to do that. And then we'll count the
12 ensuing 90-day period from that and set precise dates.

13 MS. HOULE: Thank you, your Honor.

14 THE COURT: The motion to exclude the time has been
15 made to February 28.

16 Without objection, Mr. Schacht?

17 MR. SCHACHT: No objection. Thank you.

18 THE COURT: So ordered.

19 MS. HOULE: Nothing further from the government.

20 THE COURT: Mr. Schacht.

21 MR. SCHACHT: Nothing. Thank you very much for your
22 time.

23 THE COURT: Thank you very much, folks.

24 (Adjourned)

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